Supreme Court, U. S.
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IN THE

Supreme Court of the United States

No. ... 78-1869

OCTOBER TERM, 1979

DON REHAHN, et al.,
Petitioners,
vs.
GENERAL MOTORS CORPORATION
and LOCAL UNION 160, UAW,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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Petitioners respectfully pray that a Writ of Certiorari be issued out of this Court to review the Judgment of the Sixth Circuit Court of Appeals of February 16, 1979, affirming the Summary Judgment of the U.S. District Court of Michigan, Eastern District, and the March 19, 1979, Order of the Sixth Circuit Court of Appeals denying petitioners' application for rehearing, in pursuance of Section 1254, Title 28, U.S.C.A. - Petition for Writ of Certiorari, in a Civil Proceeding.

OPINIONS AND ORDERS BELOW

The Opinion of the District Court granting Summary Judgment to Defendants, the Order and Opinion of the Court of Appeals for the Sixth Circuit affirming the Summary Judgment, and its Order and Opinion denying petitioners Petition for Rehearing have not been reported. They are printed in the Appendix hereto appended, (pp A1-A11).

JURISDICTION

The Orders of the Court of Appeals for the Sixth Circuit, affirming the Summary Judgment and denying Petitioners' petition for rehearing were entered February 16, 1979 and March 19, 1979, respectively. The petition for rehearing was timely filed.

QUESTIONS PRESENTED FOR REVIEW

1.

Did the District Court and the Sixth Circuit Court of Appeals disregard the often repeated rule of law that Summary Judgments may not be granted where there are material disputed questions of fact involved?

2.

Did Petitioners' Complaint state a cause of action for which relief should be granted?

3.

Were there collusion and actions in concert between defendants resulting in the violation of Chapter 59 of the Labor-Management Agreement (Plant Seniority)? Printed in Appendix hereto appended (p A-12).

4.

Did Petitioners exhaust their remedies within the Union?

5.

Were Petitioners' entitled to receive fair representation by the defendant Local Union?

6.

Were the Summary Judgments granted to defendants by the District Court, and affirmance by the Sixth Circuit Court of Appeals and denial of petition for rehearing, contrary to and in disregard of the decision and rulings of this Court in the case of *Hines* v *Anchor Motor Freight, Inc.*, 424 US 554, 47 L Ed 2d 231, 96 S Ct 1048 (March 3, 1976)?

CONCISE STATEMENT OF THE CASE

Defendant Local Union 160, affiliated with the International Union UAW, is the Union to which all of the Plaintiffs belonged during all of their employment and still do now belong.

INFLUX OF MEMBERS IN LOCAL 160

Prior to Petitioners' discharge, Local 160 was a small local, whose members were employed at GM's Tech Center, Warren, Michigan. A large number of employees of GM who had been employed at Ternsted's in Detroit, making hardware for G.M., were transferred to the Tech Center and became members of Local 160, becoming an overwhelming majority of several thousands of the membership in said local, in contrast to the small number of Petitioners.

DISCHARGE OF PLAINTIFFS

Petitioners, 36 in number, with seniorities as experienced "journeymen", employees of Defendant General Motors as of August 20, 1974, ranging from 17 to 31 years at the time of starting their suit, were discharged or (laid off) upon the claim that the work done by them had been discontinued. The local union wrongfully acquiesced in this action, in violation of Chapter 59 of the Union-Management Agreement, (Plant Seniority) (Appendix A12). Petitioners denied the claim of defendants, alleging that the work they had been doing was being done by others after their discharge.

Plaintiffs, by reason of the improper behavior of the defendants, were out of work for a substantial period of time, during which they had been unable to secure comparable employment. That claim for damages for wages lost by each of the plaintiffs is set forth as follows:

ESTIMATED PERSONAL LOSSES

Donald Rehahn	$32,000
Harry Larkins	$20,000
Xavier Bonkowski	$20,000
Jack D. Cornett	$20,000
Edwin Januszkowski	$32,000
Walter Obrenci	$32,000
Lawrence Traub	$32,000
Alex Bell	$32,000
Howard Casey	$26,000
Donald Ralston	$35,000
Leland Bartlett	$26,000
Charles Murphey	$26,000
Joseph Wojtan	$26,000
Adolph Uruski	$26,000
Thomas Wooley	$26,000
Mike Folksa	$26,000
Donald Wisniewski	$26,000
Gaythorne Bland	$26,000
Wilson Eleinko	$26,000
Archie Bozick	$26,000
Frank Johns	$26,000
George Toth	$20,000
Tony Amella	$26,000
Ray Rhodes	$26,000
Abel Leuchter	$26,000
William Long	$35,000
John Stumpf	$35,000
Bernard Charboneau	$45,800
Milton Motherwell	$26,000
Henry Dara	$26,000
Edward Wojciechowski	$26,000
Michael Kouri	$26,000
Marvin Elliot	$26,000
David Wyckoff	$26,000
James Gorski	$26,000
Kenneth Larkins	$26,000

Petitioners charged the defendants with collusion, resutlting in their violation of the provisions of the Union-Management Agreement alleging that Plaintiffs were being deprived of their valuable rights of plant seniority, secured by the Union-Management Agreement, Paragraph 59 (supra), and acquiesced in by defendant local union, amounting to improper and unfair representation by the Defendant local union.

REMOVAL OF ACTION TO U.S. DISTRICT COURT

Petitioners-Plaintiffs instituted their suit by filing their complaint and demand for jury trial in the Circuit Court for Wayne County, Michigan, on August 28, 1974. Defendants filed motions to remove the action to the U.S. District Court for the Eastern District of Michigan on the claim that the District Court had original jurisdiction by virtue of the Labor-Management Relations Act, 29 USC par. 185.

Plaintiffs filed their objections to the removal on the ground that the District Court did not have exclusive jurisdiction — that the jurisdiction was concurrent, and they had chosen the forum, the Circuit Court for Wayne County, where it should remain. The District Court granted removal.

DEFENDANTS FILE MOTIONS FOR SUMMARY JUDGMENT

Defendant General Motors filed its answer denying petitioners' allegations, and alleging that petitioners' complaint failed to state a claim for which relief could be granted. It alleged affirmatively that the grievance of

petitioners had been determined by arbitration — that they had not exhausted their remedies within the union — that they had failed to particularize their claim of fraud.

PLAINTIFFS' REPLY

Plaintiffs-Petitioners filed their answers to the affirmative matter contained in G.M.'s Answer, and the affirmative defenses (9/26/74) charging that the proceedings ostensibly taken by defendant local union in their behalf amounted to a fraud upon them, by reason of the collusion between the defendants; that they had not been fairly and impartially represented, etc.

DEFENDANT UNION MOTION TO DISMISS

Defendant local union did not file an answer, but filed its motion to dismiss or for summary judgment on the ground that plaintiffs' (Petitioners) complaint failed to state a claim upon which relief could be granted. (11/1/74). Affidavits were submitted in support of the motion. Defendant also alleged and claimed that the arbitration was final — that the action was barred by the State of Michigan's limitation of actions; the affidavits denied plaintiffs' allegations and charges.

Defendant General Motors then filed its Motion for Summary Judgment (Dec. 6, 1974).

PLAINTIFFS' ANSWERS TO DEFENDANTS' MOTIONS

Plaintiffs (Petitioners) filed their detailed answers to the motions of defendants, including exhibits and affidavits (12/30/74) denying the allegations of said motions, affirmatively asserting their claims for relief.

Memorandum Opinion of the District Court was filed February 13, 1976, appended hereto. (Appendix A1).

The International Union had directed Defendant Local Union 160 to support Plaintiffs' status in their seniority rights. Defendant Local 160, working in collusion with Defendant General Motors, refused, despite the fact that layoff of Plaintiffs was in violation of Paragraph 59 and Section 220, p. 133, of the Union-Management Agreement, which provides:

> "No provisions of any local agreements between local Plant Management and Shop Committees therein shall supersede or conflict with any provisions of this Agreement."

RE: ARBITRATION

The International Union neither initiated nor processed the arbitration inasmuch as it had already indicated its support of Petitioners' (Plaintiffs) position on Section 59 of the Union-Management Agreement, and had so advised Defendant Local Union.

At the arbitration hearing, Plaintiffs (Petitioners) had sought to testify as to their status and classification

of "journeymen" over a long period of time prior to the influx of the Ternstedt group into the defendant local union. They were prevented by defendants from so doing on the ground that it had been agreed between the representative of defendant local union and defendant General Motors that the matter of classification was not to be raised.

The local union's representative advised Plaintiffs that raising this question would be detrimental to their position and Plaintiffs, relying upon this advice, were lulled into a false sense of security that their rights were being protected.

The Umpire had no right to pass on the seniority status of the Plaintiffs by reason of the express terms of the Union-Management Agreement, Paragraph 46, Union-Management Agreement, re Umpires in Arbitration hearings, inter-alia, provides:

> "The umpire shall have no power to add to or subtract from or modify any of the terms of this Agreement or any agreement made supplementary hereto."

The arbitration proceeding was arbitrary and amounted to a fraud against the Plaintiffs.

The reinstatement to employment of Plaintiffs was in derogation of the status of "journeymen" with a long plant-seniority status at the Tech Center Plant. Their "journeymen" seniority status was destroyed and they were placed at the bottom of the employment status (EITS) having to start seniority all over again as if they had just been originally employed.

Many of the Plaintiffs were recalled to employment at the Tech Center but under the lowest status as beginners (EITS). This occurred July, 1974, after it was made known to both defendants that Plaintiffs had retained Larry S. Davidow as their attorney to pursue their complaint against the defendants. As a prerequisite to their re-employment they were to abandon their claim which would be effective only in the event that all of the Plaintiffs would so agree. All of the Plaintiffs did not agree so there was no valid agreement. Petitioners then instituted action as hereinabove described.

RULINGS OF LOWER COURT

Following argument of respective counsel on defendant's motions for Summary Judgment, said motions were taken under advisement by the District Court. The Opinion of the District Court was filed February 13, 1976, granting Summary Judgment to the defendants against Plaintiffs.

Motion of Plaintiffs for rehearing in the District Court, calling attention of the Court to the then most recent decision of this Court on the issues involved, *Hines* v *Anchor Motor Freight, Inc., supra,* was timely filed. The motion was denied. (Appendix A6). Plaintiffs timely filed their appeal to the Sixth Circuit Court of Appeals.

The Sixth Circuit Court of Appeals affirmed the lower Court (Appendix A10) and denied Plaintiffs' (Petitioners) motion for rehearing (Appendix A10).

REASONS FOR GRANTING WRIT

1. The decision of the U.S. District Court in the instant case granting the motions of the Defendants for Summary Judgment, and in denying Plaintiffs' motion for rehearing, are in conflict with many cases decided by and reported in the decisions of this Court, particularly the decision of this Court in the case of *Hines* v *Anchor Motor Freight, Inc., et al,* 424 US 554, 47 L Ed 2d 231, 96 S Ct 1048 (1976).

2. The opinion and rulings of the U.S. Court of Appeals for the 6th Circuit is in conflict, in the instant case, with many decisions of other U.S. Courts of Appeals.

3. The U.S. District Court and the 6th Circuit Court of Appeals in the instant case have departed from the accepted and usual course of judicial proceedings in reference to Motions for Summary Judgment.

4. The U.S. 6th Circuit Court of Appeals, in its decision and rulings in the case at bar, has sanctioned such departure by the U.S. District Court, all of which calls for the exercise of this Court's power of supervision.

ISSUES INVOLVED

1.

Did the District Court and the Sixth Circuit Court of Appeals disregard the often repeated rule of law that Summary Judgments may not be granted where there are material disputed questions of fact involved?

Petitioners respectfully submit that it has been the accepted rule of law over a long period of time and continuing to the present time, that motions for summary judgment may not be granted where there are material disputed questions of fact.

We herewith submit a few of the material disputed questions of fact which the lower courts have ignored:

(a) Plaintiffs deny the Defendants' claim of the defense of limitation of actions.

(b) Plaintiffs deny defendant local union claim that the representative handling the hearing before the Umpire was the representative of the International Union, which is not a party in the case.

(c) Plaintiffs deny Defendants' claim they did not exhaust their inter-union remedies.

(d) Plaintiffs deny the Defendants' claim that there was no failure on the part of the local union to properly and fairly represent the Plaintiffs in their grievance.

(e) Plaintiffs deny the Defendant GM's claim that the elimination of the work-classification of Plaintiffs, which resulted in their lay-offs, was due to their services no longer being required.

(f) Plaintiffs deny Defendants' claim that the "Agreement" signed by some of the Plaintiffs at the time of their belated recall promulgated by GM in 1974, and acquiesced in by defendant Local Union, shortly prior to the institution of the instant suit, bars Plaintiffs' action.

MATERIAL FACTS ENTITLING PLAINTIFFS TO RELIEF

(a) There can be no denial of the fact that the International Union Executive Board had agreed and supported the position of the Plaintiffs, and had ordered Defendant Local Union to follow through to grant them their seniority rights (Appendix A16, A17).

(b) It cannot be denied that the issue of seniority is a vital one.

(c) Plaintiffs over the years of employment as journeymen for Defendant General Motors had as of August 28, 1974, earned seniority ranging from 17 to 31 years.

(d) The rights of seniority were embodied in Paragraph 59 of the 1970 Union-Management Agreement, to which Plaintiffs were entitled.

(e) The EITS classification, which was imposed upon Plaintiffs after being unemployed for several years, stripped them of their respective seniorities and reduced them to the status of beginning apprentices, with no seniority, to start at the bottom of the seniority ladder, in violation of Paragraph 59 of the Agreement, *supra*.

> *FITZSIMMONS* v *BEST*, 528 F2d 692, 694 (1976).
>
> "Thus, summary judgment is appropriate only if it appears that 'there is no genuine issue as to *any material fact* and that the moving party is entitled to a judgment as a matter of law.' F.R. Civ. P. 56(c); Poller v Columbia Broadcasting System, 368 U.S. 464, 82 S Ct 486, 7 L Ed 2d 458 (1962). For the purpose of determining whether

any material fact remains disputed, *'the inferences to be drawn from the underlying facts. . . .must be viewed in the light most favorable to the party opposing the motion.'* " (Citing cases) (emphasis ours)

HUGHES v *AMERICAN JAWA, LTD*, 529 F2d 21, 23 (1976).

"Summary judgment should be entered only when the pleadings, depositions, affidavits, and admissions filed in the case 'show that (except as to the amount of damages) there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' Rule 56(c) Fed. Rules Civ. Proc., 28 USCA. This rule authorizes summary judgment 'only where it is quite clear what the truth is, . . .(and where) no genuine issue remains for trial. . . (for) the *purpose of the rule is not to cut litigants off from their right of trial by jury if they really have issues to try.'* " (Citing cases) (our emphasis)

JENKINS v *McKEITHEN*, 395 US 411, 23 L Ed 2d 404, 89 S Ct 1843, 416 (1969).

"*For the purposes of a motion to dismiss, the material allegations of the complaint are taken as admitted.* See, e.g. Walker Process Equipment, Inc. v Food Machinery & Chemical Corp., 382 US 172, 174-175, 15 L Ed 2d 247, 249, 250, 86 S Ct 347 (1965). And, *the complaint is to be liberally construed in favor of plaintiff*. See Fed. Rule Civ. Proc. 8 (f); Conley v Gibson, 355 US 41, 2 L Ed 2d 80, 78 S Ct 99 (1957). The complaint should not be dismissed unless it appears that appellant

could "prove no set of facts in support of his claim which would entitle him to relief." Conley v Gibson, supra, at 45-46, 2 L Ed 2d at 84. With these rules in mind, we turn to examination of the allegations of appellants complaint." (our emphasis).

BISHOP v *WOOD*, 426 US 341, 48 L Ed 2d 684, 96 S Ct 2074, 691 (1976).

"In our appraisal of petitioner's claim we must accept his version of the facts since the District Court granted summary judgment against him."

ADICKES v *KRESS & CO*, 398 US 144, 26 L Ed 2d 142, 154 (1970).

"We think that on the basis of this record, it was error to grant summary judgment. As the moving party, respondent had the burden of showing the absence of a genuine issue as to any material fact, and *for these purposes the material it lodged must be viewed in the light most favorable to the opposite party.*" (our emphasis)

POLLER v *COLUMBIA BROADCASTING SYSTEM*, 368 US 464, 7 L Ed 2d 458, 461-4 (1962).

"Summary judgment should be entered only when the pleadings, depositions, affidavits, and admissions filed in the case 'show that (except as to the amount of damages) there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law' . . .where it is quite clear what the truth is. .(and where no genuine issue remains for

trial) *for the purpose of the rule is not to cut litigants off from their right of trial by jury if they really have issues to try."* (Citing cases) (our emphasis)

* * * *

"It may be that upon all of the evidence a jury would be with the respondents. But we cannot say on this record that 'it is clear what the truth is'. . .We look at the record on summary judgment in the light most favorable to Poller, the party opposing the motion, and conclude here that it should not have been granted. . .Trial by affidavit is no substitute for trial by jury which so long has been the hallmark of 'even handed justice.' "

REDHOUSE v *QUALITY FORD SALES, INC.*, 511 F 2d 230, 234 (1975).

"Summary judgment does not serve as a substitute for trial, nor can it be employed so as to require parties to litigate via affidavits." (Citing cases)

"It is considered a drastic relief to be applied with caution. . .pleadings, therefore, *must be liberally construed in favor of the party opposing summary judgment."* (Citing cases) (our emphasis)

* * * *

"Appellant courts must consider factual inferences tending to show triable issues *in a light most favorable to the existence of such issues."* (emphasis ours)

2.

Did Petitioners' (Complaint state a cause of action for which relief should be granted?

Petitioners respectfully submit that their Complaint does state facts and circumstances to support their action. There are 36 individual plaintiffs joined together for the purpose of the suit asserting their rights to relief jointly and severally arising out of the same facts, circumstances and occurrences, questions of fact and law, all of which are common to all of them individually and severally. They allege:

(a) The specific years of seniority as employees of General Motors accumulated by each of them ranging from 17 to 31 years;

(b) They are all members of defendant local union 160 of the UAW and had been members of the union during all of their employment up to and including the present time;

(c) The Union-Management Agreement in existence in 1970;

(d) The Executive Committee of the International UAW recognized Plaintiffs' right to protection under Paragraph 59 of the Union-Management Agreement.

(e) That by reason of certain collusive tactics on the part of Defendants, Plaintiffs were led into an arbitration hearing which amounted to a fraud and a farce, inasmuch as a proper presentation of Plaintiffs' case was not permitted by the defendants, particularly as it related to their classification of employment and rights of seniority.

(f) That the hearing before the Umpire was under the control of Defendants and Plaintiffs were persuaded to follow the advice of the local union representative which worked a fraud upon Plaintiffs.

(g) That the Umpire did illegally and contrary to the Union-Management Agreement find that Plaintiffs were not journeymen, contrary to the provisions of Paragraph 59 of the Union-Management Agreement. (Par. 46, Union-Management Agreement, supra)

(h) That the action of the defendants in the procedure before the Umpire was fraudulent and based upon predetermined and collusive action between the defendants.

(i) That the status of seniority was one of the most important rights of employees inasmuch as the greater the seniority, the greater the likelihood of unbroken employment.

PLAINTIFFS' RIGHTS UNDER RULE RE MOTIONS FOR SUMMARY JUDGMENT

That adhering to the general rule often repeated and upheld, all material allegations in the complaint must be accepted as true for the purpose of a motion for summary judgment (and all legitimate inferences therefrom) must be decided in favor of the person opposing the motion, here, the Petitioners in the case at bar.

Defendant General Motors' answer denied the allegations of the Plaintiffs. It affirmatively stated that the Plaintiffs failed to state a claim upon which relief could be granted, and further claimed that Plaintiffs had failed to particularize circumstances constituting fraud and had failed to exhaust internal union remedies.

Plaintiffs filed their answer to the affirmative allegations and stated that Plaintiffs were lulled into a false sense of security that their rights would be properly protected, which events subsequently indicated were not protected.

Defendant local union filed no answer. It filed its motion to dismiss and/or summary judgment alleging the same reasons as claimed by defendant General Motors.

RULE OF LAW

Petitioners respectfully submit that these several motions for summary jugment and/or to dismiss their complaint and answers of Petitioners thereto clearly demonstrate that there are indeed a number of material disputed questions of fact which must be accepted as true; that all reasonable inferences therefrom must be viewed in the light most favorable to the Petitioners opposing the motions. The lower Courts completely disregarded this rule.

Petitioners claim that it was and is not required of them to set forth testimony which would or could be presented through witnesses in depositions and discovery and upon trial.

Rule 8 (a) of the Federal Rules of Civil Procedure as Amended provides:

> "Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, . . .shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, . . .(2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled."

* * * *

(e) (1) Each averment of a pleading shall be simple, concise and direct. No technical forms of pleadings or motions are required.

(f) Construction of pleadings. *All pleadings shall be so construed as to do substantial justice."* (Our emphasis)

Petitioners' claims for damages covered wages they would have individually earned and were deprived of during the long period of time during the discharge (layoff). If defendant union had properly and fairly represented them in accordance with Paragraph 59 of the Labor Management Agreement, said Petitioners would not have been discharged (laid off), their seniority would not have been adversely affected, and they would not have suffered any loss.

3.

Were there collusion and actions in concert between Defendants resulting in violation of Chapter 59 of the Labor-Management Agreement, (Plant Seniority)?

Petitioners respectfully submit that while defendants deny collusion charged by Plaintiffs, the facts and circumstances lead to the ineluctable conclusion that there was collusion and concert of actions between the defendants, as demonstrated by the proceedings before the Umpire in the farcical arbitration hearing and their refusal to follow the ruling of the International Executive Board of the UAW.

Obviously, only testimony taken on deposition or discovery and upon trial can bring forth the truth of the facts in this case. Summary judgment stripped Plaintiffs of their day in Court.

The Umpire during the arbitration hearings exceeded his power and authority when in effect he vitiated Paragraph 59 of the Union-Management Agreement and Paragraph 46 of the Labor Management Agreement having reference to power of arbitration:

> "No provision of any local agreements between local Plant Managements and Shop Committees therein shall supersede or conflict with any provisions of this Agreement."

(After the Umpire's decision, Joseph Malotke, Plant Chairman of Defendant Local Union, told some of the plaintiffs, "that if he had been on our side, the Template Makers, meaning Plaintiffs, would not have lost the Umpire Decision.)

4.

Did Petitioners exhaust their remedies within the Union?

Petitioners respectfully submit that a review of the matters contained in the joint appendix filed in the U.S. Court of Appeals for the Sixth Circuit Court clearly shows that they had exhausted the remedies afforded them by the International UAW.

The Executive Board of the UAW had agreed that the Plaintiffs were entitled to the benefits and rights of Paragraph 59 of the Union-Management Agreement. The Local Union in concert with Defendant GM refused to abide by said ruling. Defendants sought to have plaintiffs withdraw their grievance, without success.

5. & 6.

Were Petitioners entitled to receive fair representation by the defendant Local Union?

Petitioners respectfully submit that questions 5 and 6 can be merged for the purpose of showing jurisdiction of this Court to grant Writ of Certiorari.

The District Court, after hearing the argument of respective counsel on the motions of defendants for summary judgment, on January 6, 1975, took the matter under advisement. Subsequently on February 13, 1976, the Court entered an order granting the motions of defendants for summary judgment. Judgments were entered accordingly. Thereafter, motion for new trial-rehearing was timely filed on behalf of Plaintiffs (Petitioners) on February 20, 1976. The District Court denied the motion for new trial-rehearing. Petitioners timely filed their appeal to the Sixth Circuit Court.

Hines v *Anchor Motor Freight, Inc.*, 47 L Ed 2d 231, 238, 239, 241, 243, 244 (decided March 3, 1976). (Reported in the Advance Sheet edition of April 9, 1976).

Plaintiffs charged breach of the collective bargaining agreement, and breach of fair representation by the union. The District Court granted summary judgment in favor of the defendant union, and denied the employer's motion. The Court of Appeals reversed as to the union, but affirmed as to the employer. The Supreme Court reversed as to the employer and remanded the case, holding that plaintiffs could recover from both union and employer if they could sustain their cause of action by proofs.

"Although indicating that the acts of the Union 'may not meet professional standards of competency, and while it might have been advisable for the Union to further investigate the charges, . . . the District Court concluded that the facts demonstrated at most bad judgment on the part of the Union, which was insufficient to prove a breach of duty or make out a prima facie case against it.

After reviewing the allegations and the record before it, the Court of Appeals concluded that there were sufficient facts from which bad faith or arbitrary conduct on the part of the local union could be inferred by the trier of fact and that petitioners should have been afforded the opportunity to prove their charges.

The duty of fair representation has served as a 'bulwark to prevent arbitrary union conduct against individuals stripped of traditional forms of redress by the provisions of federal labor law.' (Vaca v Sipes)

Claims of union breach of duty may arise during the life of a contract when individual employees claim wrongful discharge or other improper treatment at the hands of the employer. Contractual remedies, at least in their final stages controlled by union and employer, are normally provided; yet the union may refuse to utilize them or if it does, assertedly do so discriminatorily or in bad faith. The problem then is to determine under what circumstances the individual employee may obtain judicial review of his breach-of-contract claim despite his failure to secure relief through the contractual remedial procedures."

In the case at bar, three of the plaintiffs submitted affidavits in opposition to defendants' motions for summary judgments, in reference to the action of the defendant local union, through the Plant Chairman, Joe Malotke, when he said, in substance, that if he had been on the side of the Plaintiffs, they would not have lost the Umpire's decision.

Plaintiffs asserted that the defendant local union had breached its duty in acquiescing with the improper action of the employer, GM; that it had prevented the plaintiffs from bringing out all of the facts in reference to the grievance in the hearing before the Umpire; that the union had failed and refused to require the employer, GM, to abide by the Union-Management Agreement; that it acquiesced in the re-classification of Plaintiffs' work and seniority status, reducing them to the EITS status which deprived them of their properly earned seniority rights; that at a special meeting held June 28, 1972, between shop committeemen of the union and representatives of GM, to determine Management's position regarding implementation of Paragraph 59, the minutes show, *inter alia*, the following:

> "In response to Management's query as to whether the above committee's request is to be interpreted as a proposal, the Committee stated it is not making such a proposal to Local Management nor does it intend to make such a proposal."

Plaintiffs' affidavits in opposition to defendants' motions for Summary Judgment clearly demonstrate, we submit, that there was and is a sufficient showing to require a trial on the merits; that the plaintiffs are entitled to redress in the Courts.

Again, from the *Hines* case, *supra*:

> ". . . .it is urged that when the procedures have been followed and a decision favorable to the employer announced, the employer must be protected from relitigation by the express contractual provisions declaring a decision to be final and binding. We disagree. The union's breach of duty relieves the employee of an express or implied requirement that disputes be settled through contractual grievance procedures; if it seriously undermines the integrity of the arbitral process the union's breach also removes the bar of the finality provisions of the contract."

Continuing at page 244:

> "But the judicial remedy in Humphrey v Moore was sought after the adverse decision of the joint arbitration committee. Our conclusion in that case was not that the committee's decision was unreviewable. *On the contrary, we proceeded on the basis that it was reviewable and vulnerable if tainted by breach of duty on the part of the union even though the employer had not conspired with the union."* (emphasis ours)

We respectfully submit that the rulings of the Supreme Court in the *Hines* case, *supra*, from which we have quoted extensively because of the similarity of the questions involved, abundantly reflect and support the claim of the plaintiffs that they are entitled to present their case and to be heard in a trial on the merits.

It is Plaintiffs' position that they had the right to rely upon the provisions of Paragraph 59 of the Union-Management Agreement, *supra*, which guaranteed to them their rights of seniority. Job

security, through seniority, is one of the most important, if not the most important, aspect of labor relations. It is so recognized in the provisions of Paragraph 59, *supra*.

Plaintiffs assert that if defendant local union had fairly and properly represented them, management would have had to abide by the provisions of said agreement; plaintiffs would not have been laid off; they would have continued to work; they would have continued to have their respective seniority earned over the many years of their employment.

OPINION OF 6th CIRCUIT COURT OF APPEALS

The Sixth Circuit Court of Appeals, in its Opinion-Order of February 16, 1979, affirming the District Court's granting of Summary Judgments to defendants, denying plaintiffs their day in Court, made erroneous assertions of alleged facts, completely ignoring the allegations of Plaintiffs' Complaint, their answers to the affirmative defense of Defendant G.M., their opposition to the motions for summary judgments, their exhibits, affidavits in support of their allegations, as if non-existent. For example:

> (1) Court of Appeals: "The International Union, which is not made a party in this case, processed the arbitration."

This is not only flatly denied by Plaintiffs, but the fact is that the International Executive Board of the UAW sustained Plaintiffs' claim to enforce their seniority rights as expressed in the Union-Management Agreement. (Appendix A16, A17)

> (2) Court: "The arbitrator decided in favor of the company. We find no basis for us to interfere with the decision of the arbitrator."

In fact, the Plaintiffs charged collusion between the defendants which made a farce of the so-called arbitration proceeding, and amounted to a fraud upon them, inasmuch as the Union-Management Agreement positively secured their seniority rights. Moreover, this protection was beyond the power of the Arbitrator to change.

> (3) Court: "Plaintiffs complain of the strategy adopted by the International Union at the arbitration hearing***"

The fact is the International Union did not participate in the Arbitration Proceeding; The affidavits of Howard Casey, Edwin Januszkowski, Mitchell J. Foksa, and Donald A. Wisniewski support Plaintiffs' allegations that the Arbitration Hearing was a farce and should never have been had.

> (4) Court: "We find no evidence of fraud or collusion by the unions with the company."

In fact, plaintiffs again reiterate that the International Union was not involved in the Arbitration matter; it had already held for the plaintiffs, and supported their position — that they were entitled to the seniority secured to them by Par. 59 of the Union-Management Agreement, and sought to have the Defendant Local Union comply accordingly. The defendants conspired to defeat this.

> (5) Court: "Relative to the claim by the Plaintiffs that the unions did not fairly represent them in connection with the handling of the grievance, the plaintiffs did not exhaust reasonable internal union remedies which were provided for the UAW Constitution.

Again, the Court made an erroneous conclusion of a material disputed question of fact. The affidavits of Howard Casey and Don Rehahn clearly show that all internal procedures were exhausted; the International Executive Board had decided in Plaintiffs' favor, and sought to have the defendants abide by the terms of the Union-Management agreement. Plaintiffs contend that the Decision of this Court in the *Hines* v *Anchor Motor Freight, Inc. et al.*, also support their claim. (supra)

> (6) Court: "Furthermore, all except six of the plaintiffs approved an agreement between the Local and the Company, which resolved questions with respect to their classification and seniority status***."

This again is an erroneous finding of a material disputed question of fact. The plaintiffs at no time waived their rights to seniority under the Union-Management Agreement. Joseph Malotke, Plant Chairman of defendant Local 160, at a special meeting held May 16, 1974, stated that he had the "document" which they were required to sign; that all of them (plaintiffs) would have to sign; "if one of you don't want to sign, that would not be sufficient; that it would have to be 100%.****** If one of you feel that you don't want to go, then we're not going.**** then we can't make the agreement, because management just isn't going to buy it. It's only going to buy it if it is 100% agreement because they don't want to get back into another Appeal procedure again.***"

It is undisputed that all of the plaintiffs did not sign. Their grievance was not settled. Under the circumstances, plaintiffs had no recourse except to institute their suit in the instant case.

Plaintiffs respectfully submit that all of the details involved in the case at bar can only be determined by a trial on the merits before a Jury. It cannot be resolved on a motion for summary judgment; it should not have been so determined against the plaintiffs as to deprive them of their rights without due process of law.

CONCLUSION

For the reasons hereinabove stated, plaintiffs earnestly submit that a WRIT OF CERTIORARI should issue, particularly in view of this Court's decision in the case of *Hines* v *Anchor Motor Freight, Inc. et al, supra*, and the erroneous assertions of alleged facts on the part of the 6th Circuit U.S. Court of Appeals, supra.

Respectfully submitted,

L. S. Davidow

DAVIDOW & DAVIDOW
2910 Book Tower
Detroit, Michigan 48226

Tel: 313-962-9144

Dated: June 14, 1979

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APPENDIX

MEMORANDUM OPINION

(United States District Court
Eastern District of Michigan
Southern Division)

(Filed February 13, 1976)

(Don Rehahn, et al, Plaintiffs-Appellants vs. General Motors Corporation, et al, Defendants-Appellees)

The court has before it a motion by Defendant, GENERAL MOTORS CORPORATION (GM) for summary judgment, and motions by Defendant, LOCAL 160, UNITED AUTOMOBILE WORKERS, to dismiss or for summary judgment. Pursuant to Rule 12(b) Federal Rules of Civil Procedure, the motion to dismiss shall be treated as a motion for summary judgment under Rule 56 because matters outside the pleadings are presented in connection with the motion.

Plaintiffs are thirty-six individuals who were employed by GM for periods ranging from seventeen to thirty-one years. They claim that GM wrongfully refused to recognize them as journeymen; their lay-off by GM violated the terms of the collective bargaining agreement between the Defendants; the Defendants engaged in fraudulent and collusive actions before the umpire who heard Plaintiffs' grievance; and the decision by the umpire was contrary to the collective bargaining agreement. Originally filed in state Court, GM removed this action pursuant to section 185, Title 29, United States Code.

The motions are based on several contentions. Both the local union and GM argue that (1) Plaintiffs have failed to state a claim for relief under the standard of *Vaca v. Sipes*, 385 U.S. 895 (1967); and (2) Plaintiffs have failed to exhaust their internal union remedies under the UAW's Constitution. GM argues further that the umpire's decision is final, not appealable to this court, and the three-month statute of limitations provided in the United States Arbitration Act, 9 U.S.C. Sec. 12, has run and, therefore, bars Plaintiffs' complaint. The local union contends that, because the international union controls the grievances process, the international union is an indispensable party and has not been joined in this lawsuit, thereby making dismissal proper. Only the initial two arguments made by both Defendants need be considered because it is the court's opinion that those arguments merit summary judgment in Defendant's favor.

The undisputed affidavit of William J. Beckham, the Administrative Assistant to the International Union President, makes clear that the Constitution of the International Union, in articles 32 and 33, provide for appeals by union members of any local union's action. The process includes the filing of an appeal with the International Executive Board (IEB), and an appeal from the decision of the IEB may be taken to the Constitutional Convention Appeals Committee or the Independent Public Review Board. Constitution of the International Union art. 33, Sec. 8 (April, 1970).

In this case, one of the Plaintiffs, George Toth, took an appeal as far as the IEB, but did not appeal further although he was entitled to do so under the union Constitution. None of the other plaintiffs exhausted

their appeals. Therefore, Plaintiffs have failed to exhaust their internal union remedies. This failure to exhaust is fatal to Plaintiffs' cause of action. *Bsharah v. Eltra Corporation*, 394 F.2d 502 (6th Cir. 1968); *Newgent v. Modine Mfg. Co.*, 495 F.2d 919 (7th Cir. 1974); *Watson v. General Motors, Inc.*, Civil Action No. 74-70837 (E.D. Mich. June 28, 1974).

Although an exception to the exhaustion requirement arises when the employee can prove that his union breached its duty of fair representation, *Vaca v. Sipes*, 386 U.S. 171 (1967); *Balowski v. UAW*, 372 F.2d 829 (6th Cir. 1967), the Plaintiffs in this case have failed to set forth a proper claim of unfair representation by their union. *Vaca v. Sipes* held that "(a) breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." 386 U.S. at 190. In order to properly state a claim on this basis, specific facts must be pleaded to support the allegations of the breach. Mere " 'conclusory words . . . without a concomitant showing of lack of good faith' " is insufficient to set forth a claim. *Balowski v. UAW*, 372 F.2d at 835, quoting *Hardcastle v. Western Greyhound Lines*, 303 F.2d 182, 186 (9th Cir.), *cert. denied*, 371 U.S. 920 (1962). The showing that is required must be by the allegations of fact and not the conclusions of facts. *Imbrunnone v. Chrysler Corporation*, 336 F. Supp. 1223, 1225 (E.D. Mich. 1971). While it is certainly true that "(w)hether the bargaining representative has acted fairly, impartially and without hostile discrimination depends upon the facts of each case. . ." *Balowski v. UAW*, 372 F.2d 834, it is also true that absent sufficient allegations of fact to support Plaintiffs' claim, summary judgment is appropriate.

Balowski v. UAW, supra; Imbrunnone v. Chrysler Corporation, supra; Harrington v. Chrysler Corporation, 303 F. Supp 495 (E.D. Mich. 1969). Moreover, because the case is before the court on a motion for summary judgment, we are not limited to the allegations of Plaintiffs' complaint, but must look to the material outside the complaint. *Balowski v. UAW,* 372 F. 2d at 835.

Plaintiffs' complaint, briefs opposing these motions, and affidavits by two of the Plaintiffs fall short of being proof that the union was arbitrary, acted in bad faith, was deceitful or dishonest, or acted in any way that could be considered fraudulent. *See Amalgamated Ass'n of Street, Electric Rwy & Motor Coach Employees of Am. v. Lockridge,* 403 U.S. 274, 299 (1971). Outisde of the Plaintiffs' bald allegations that the Defendants acted collusively or fraudulently, little has been established other than the fact that the Plaintiffs disagree with the ruling of the umpire in arbitration.

Under these circumstances, Plaintiffs' failure to exhaust their internal union remedies cannot be justified because specific facts amounting to substantial evidence of fraud or bad faith on the part of the union have not been shown. It is the opinion of the court that Defendants' motions for summary judgment should be granted.

/s/ Lawrence Gubow
U.S. District Judge

JUDGMENT

(United States District Court
Eastern District of Michigan
Southern Division)

(Don Rehahn, et al, Plaintiffs-Appellants vs. General Motors Corporation, et al, Defendants-Appellees).

At a session of said court held at Detroit, Michigan, this 13th day of February, 1976.

PRESENT: Hon. Lawrence Gubow
U.S. District Judge.

The matter having come before the court on Defendants' motions for summary judgment, and the court having rendered a written opinion on this date,

IT IS ORDERED, for the reasons set forth in said written opinion, that the Defendants' motions for summary judgment be, and the same hereby are, GRANTED.

/s/ Lawrence Gubow
U.S. District Judge

MEMORANDUM OPINION DENYING REHEARING

(United States District Court
Eastern District of Michigan
Southern Division)

(Filed July 29, 1976)

(Don Rehahn, et al, Plaintiffs-Appellants vs. General Motors Corporation, et al, Defendants Appellees).

The Court has before it Plaintiffs' motion for a rehearing of the opinion and order entered February 17, 1976 granting summary judgment against them. This matter was decided, pursuant to an order entered June 10, 1976, on the briefs and relevant pleadings, affidavits, and exhibits submitted by the parties for both this motion and the previous motions.

Plaintiffs argue that this court lacked jurisdiction under 28 U.S.C. Sec. 1441 because the Michigan Supreme Court, in *Loewe v. Hotel Employees*, 389 Mich. 123 (1973), held that state courts have concurrent jurisdiction with federal courts in actions under 29 U.S.C. Sec. 185. From this, Plaintiffs assert that, because jurisdiction in state court was proper, the case was improperly removed to this court on the ground that this court has "original jurisdiction" over the subject matter of the complaint. Section 1441, however, does not bar removal merely because the state and federal courts have concurrent jurisdiction over a particular cause of action and one party files first in state court. Rather, "so long as the facts pleaded disclose a federal claim, the defendant may remove it." *Talbot v. Nat'l Super Markets of La.*, 372 F. Supp. 1050, 1051 (E.D. La. 1974). The Defendants, therefore, properly removed this case from state court and jurisdiction is properly based on 28 U.S.C. Sec. 1441.

Local Rule IX-A provides that "motions for rehearing which merely present the same issues ruled upon by the Court, either expressly or by reasonable implication, will not be granted." The court remains unconvinced by the arguments raised by Plaintiffs in the motion for rehearing and stands on the reasons set forth in its initial memorandum opinion for granting Defendants' motion for summary judgment.

This is especially true with respect to the court's holding that Plaintiffs failed to set forth a claim that the union breached its duty of fair representation. The complaint lacks any factual allegations that could even arguably establish such a cause of action. *See Balowski v. UAW*, 372 F.2d 829, 835 (6th Cir. 1967). Furthermore, Plaintiffs' argue that the Supreme Court's decision in *Hines v. Anchor Motor Freight, Inc.*, 44 U.S.L.W. 4299 (U.S. March 2, 1976), is "on all fours" with this case and entitles it to vacation of this court's initial order. *Hines*, however, held that

> (t)o prevail against either the company or the Union, petitioners must show not only that their discharge was contrary to the contract but must also carry the burden of demonstrating breach of duty by the union. As the District Court indicated, this involves more than demonstrating mere errors in judgment.

44 U.S.L.W. at 4304. In the instant case, it cannot even be said that Plaintiffs have established that the union made "errors in judgment" in processing their claim through the grievance procedure and to arbitration. On the basis of the cases and authorities cited by this court in its initial decision, *Rehahn et al v. General Motors Corp, et al*, Civil Action No. 74-72405 at 4 (February 17, 1976), summary judgment in Defendants' favor was proper on this ground alone.

As to the Court's conclusion that Plaintiffs' failure to exhaust intraunion remedies bars this action, the court notes the recent decision of the Sixth Circuit in *Ruzicka v. General Motors Corp.*, 523 F.2d 306 (6th Cir. 1975). In *Ruzicka*, the court held that the union members' attempts, for 27 months, to exhaust intraunion remedies was sufficient exhaustion to allow them access to federal court. In this case, however, only one of the thirty-six Plaintiffs attempted to seek remedies under the UAW Constitution. The only Plaintiff attempting such relief stopped after the initial step, leaving at least two avenues unexhausted. Unlike the Plaintiff in *Ruzicka*, the Plaintiff in this case who sought intraunion relief was not confronted with a recalcitrant union's total neglect to take required steps toward processing the grievance or submitting it to arbitration, nor was he forced to seek intraunion relief over an inordinately large period of time. In this case, the local union processed the Plaintiff's grievance as far as it could, then turned it over to the international union (not a party to this lawsuit) which brought the matter to arbitration; nowhere was extensive delay encountered in seeking intraunion relief. The court, therefore, rests on its initial opinion that the failure of the plaintiffs to exhaust intraunion remedies is fatal to its claim and properly supports its decision granting summary judgment against Plaintiffs.

For the foregoing reasons, the Plaintiffs' motion for rehearing is denied.

/s/ Lawrence Gubow
U.S. District Judge

Dated: July 29, 1976

ORDER DENYING MOTION FOR RE-HEARING

(United States District Court
Eastern District of Michigan
Southern Division)

(Filed July 29, 1976)

(Don Rehahn, et al, Plaintiffs-Appellants vs General Motors Corporation, et al, Defendants-Appellees).

At a session of said court held at Detroit, Michigan, this 29th day of July, 1976.

PRESENT: Hon. Lawrence Gubow
U.S. District Judge.

This matter having come before the court on Plaintiffs' motion for rehearing and a written memorandum opinion having been rendered on this date,

IT IS ORDERED that, for the reasons stated in the memorandum opinion, Plaintiffs' motion for rehearing be, and hereby, is DENIED.

/s/ Lawrence Gubow
U.S. District Judge

ORDER

(United States Court of Appeals
For the Sixth Circuit)

(Filed February 16, 1979)

(Don Rehahn, et al, Plaintiffs-Appellants vs General Motors Corporation, et al, Defendants-Appellees) No. 77-1163.

Before WEICK, CELEBREZZE and LIVELY
Circuit Judges.

Upon consideration of the briefs, the appendices, and arguments of counsel, we are of the opinion that the District Court did not err in granting the motion for summary judgment. Plaintiffs' grievance against General Motors Corporation (Company) was processed to the third stage by the Local Union. The International Union, which was not made a party to this case, processed the arbitration. The arbitrator decided in favor of the Company. We find no basis for us to interfere with the decision of the arbitrator.

Plaintiffs complain of the strategy adopted by the International Union at the arbitration hearing, which was fully explained and agreed to by the plaintiffs in attendance. We find no evidence of fraud or collusion by the unions with the Company.

Relative to the claim by the plaintiffs that the unions did not fairly represent them in connection with the handling of the grievance, the plaintiffs did not exhaust reasonable internal union remedies which were provided for in the UAW Constitution, and which are binding on them. *Bsharah v. Eltra Corp. and UAW*, 394 F.2d 502 (6th Cir. 1968).

Furthermore, all except six of the plaintiffs approved an agreement between the Local and the Company,

which resolved questions with respect to their classification and seniority status. As a result of that agreement almost all of the employees were recalled to work.

Because of our disposition of this appeal, we need not consider the issue of the Michigan statute of limitations.

The judgment of the District Court is affirmed.

ENTERED BY ORDER OF THE COURT

/s/ John P. Hehman
Clerk

Issued as Mandate: March 26, 1979
COSTS: NONE

ORDER

(United States Court of Appeals
For the Sixth Circuit)

(Filed March 19, 1979)

(Don Rehahn, et al, Plaintiffs-Appellants vs General Motors Corporation, et al, Defendants-Appellees) No. 77-1163

Before WEICK, CELEBREZZE and LIVELY, Circuit Judges.

Upon consideration of the petition for rehearing, we are of the opinion that the issues on appeal were adequately discussed in our Order affirming the judgment of the District Court, and that the petition for rehearing lacks merit.

It is accordingly ordered that the petition for rehearing be and it is hereby denied.

ENTERED BY ORDER OF THE COURT

/s/ John P. Hehman, Clerk

ARTICLE 59 OF LABOR-MANAGEMENT AGREEMENT

"SENIORITY"

Seniority shall be by non-interchangeable occupational groups within departments, groups of departments or plant-wise as may be negotiated locally in each plant and reduced to writing. It is mutually recognized by the parties that written local seniority agreements are necessary. All local seniority agreements and modifications or supplements thereto shall be reduced to writing and be subject to the approval of the Corporation and the International Union.

When changes in methods, products or policies would otherwise require the permanent laying off of employees, the seniority of the displaced employes shall become plant-wide and they shall be transferred out of the group in line with their seniority to work they are capable of doing, as comparable to the work they have been doing as may be available at the rate for the job to which they have been transferred."

LETTER FROM GEORGE TOTH, TO LEONARD WOODCOCK REPRESENTING PLAINTIFFS

November 27, 1970

Mr. Leonard Woodcock, President
International Union - UAW
Solidarity House
8000 East Jefferson Avenue
Detroit, Michigan 48214

Dear Brother Woodcock:

We are a group of forty-five (45) U.A.W. Members employed in the Template Department at the Fisher Body Division of the General Motors Technical Center. We are represented by the Fisher Body Engineering Shop Committee, and are one (1) Union of eight (8) that belong to the Amalgamated U.A.W. Local 160.

Under Article #33 of the Constitution of the International Union we are appealing to you the action taken by the Fisher Body Engineering Shop Committee.

The appeal is over the way the Shop Committee is neglecting the provisions of Paragraph #59 of the National Agreement and are in fact insisting that said provisions be violated.

As you know the advancement in new technology has affected many trades in the auto industry, thus affecting many U.A.W. Members.

One of the most affected by Management's changes in *methods* are those U.A.W. Members employed as Template Makers.

Our jobs are rapidly being eliminated. Of the forty-five (45) U.A.W. Members making this appeal, we currently have thirty-three (33) members on lay-off.

The Shop Committee during this current set of negotiations insisted to Management that the provisions of Paragraph 59 should not apply to us. Instead they proposed that not only our laid-off members but the remaining twelve (12) members in the plant be transferred out of the Template Department and be made E.I.T.S in the Metal Worker Engineering Bench and Layout classification, and in so doing deny us the seniority rights we are entitled to.

The ironic part of it is that *all* forty-five (45) members were classified Metal Worker Engineering Bench and Layout at one time and carry a U.A.W. Journeymen's card in that classification. Our seniority ranges from 1948 to 1960 and until we were re-classified in 1965 worked in the very classification the Shop Committee now wants to make us E.I.T.S.' in.

It was Management's position that all Template Makers be transferred under Paragraph 59 and retain *full* seniority with *full* pay to the Metal Workers Engineering Bench and Layout classification.

On Monday, November 23, 1970 George Toth asked his Committeeman, on behalf of the Template Makers, to write a grievance on Paragraph 59 and was refused.

We therefore are appealing to you to protect our basic rights and insure our job protection, because as you can see some of us have twenty-two (22) years invested and don't want to see a life's work thrown out by the Shop Committee.

Furthermore, we are asking you to waive the provisions that one must go thru before an appeal to the International President can be acted upon.

Section 1 of Article 33 states you have the authority upon written application to waive the procedure where unusual circumstances would warrant such waiver.

We feel to take it before a group that influenced the Committee to begin with would cost us precious time, and as out numbered as we are (45 Template Makers vs nearly 400 Metal Workers Engineering Bench and Layout) we fear they would ignore Paragraph 59 of the National Agreement.

We are told that the move will take place within the next two (2) weeks, so time is extremely short.

We currently have over two hundred (200) men laid off at Fisher with over one hundred thirty (130) more being laid off today. Some of these men are in the Metal Worker Engineering Bench and Layout classification, so we question whether we will become E.I.T.S.' or also go to the streets when our current classification is depleted.

It is for the above reasons we ask for a prompt, fair and equitable disposition on our appeal.

Respectfully submitted in behalf of the attached mentioned Template Makers from Fisher Body Engineering,

Fraternally,
/s/ George Toth
George Toth, Spokesman
Fisher Body Template Makers
Fisher Body Engineering
Local 160 U.A.W.

GT:btj
opeiu42

cc: E. Moran, G. Merrelli, W. J. Carr
W. R. Wojciechowski, E. Keith, J. Malotke

Encl:

RECOMMENDATION OF INTERNATIONAL EXECUTIVE BOARD

"RECOMMENDATION

It is the recommendation of our committee to the International Executive Board that the appeal of George Toth, et al, be upheld and that the shop committee of the Fisher Central Engineering unit commence discussions with the local Management to apply the provisions of Paragraph (59) of the November 11, 1970, UAW-GM Agreement to the Template Makers involved herein."

/s/ Pat Greathouse
Vice-President, Chairman,
Appeals Committee

/s/ E. T. Michael
Director, Region 8

DECISION OF THE INTERNATIONAL EXECUTIVE BOARD — UAW

February 1, 1972

Mr. George Toth, et al Members
Local Union 160, UAW
27436 Mound Road
Warren, Michigan 48092

Re: *Appeal of George Toth, et al, Local Union 160*
Appealing from the decision of the Fisher Body unit in denying their rights they state, under Paragraph 59 of the National Agreement, based upon a refusal to write grievances for them and requesting they be transferred to the skilled trades classification of metal worker engineering bench and layout.

Dear Sirs and Brothers:

The above captioned appeal, submitted by you to the International Executive Board in accordance with Article 33, Section 6, of the International Constitution, was submitted to the Nine-Man Committee of the International Executive Board by the Appeals Committee processing your appeal in accordance with Article 33, Sections 7 and 8, and the report and recommendation by the Committee was carefully reviewed by the Nine-Man Committee.

The Nine-Man Committee adopted the recommendation of the Appeals Committee on your appeal and the decision was submitted to all members of the International Executive Board for their review and concurrence.

As a result, the recommendation of the Appeals Committee, adopted by the Nine-Man Committee after review and concurrence by the full International Executive Board, is the decision of the International Executive Board in connection with your appeal submitted April 26, 1971.

Accordingly, the attached recommendation by the Appeals Committee is the decision of the International Executive Board relative to the above captioned appeal.

Fraternally yours,

Leonard Woodcock, President
INTERNATIONAL UNION, UAW

LW:bc
opeiu 42
Enclosure

CERTIFIED MAIL

cc: GM Department
George Merrelli, Director, Region 1
Appeals Committee
William J. Carr, President
Walter Wojciechowski, Recording Sec'y,
Local 160

EXCERPT FROM SPECIAL MEETING OF LOCAL 160, UAW

FISHER BODY DIVISION
GENERAL MOTORS CORPORATION
CENTRAL ENGINEERING
ENGINEERING SHOPS

SPECIAL MEETING
Wednesday, June 28, 1972
(10:00 a.m. to 11:30 a.m.)

* * *

The Committee stated it requested the instant meeting to determine Management's position regarding implementation of Paragraph No. 59 of the National Agreement to the former Template Maker employes. The Committee explained that it had been directed by the International Union (based upon the recommendation of the Appeals Committee and Executive decision) to meet with Local Management and make the following request:

1. Whether Local Management would apply the provisions of Paragraph 59 of the National Agreement to the former Template Makers, and
2. If Paragraph No. 59 provisions of the National Agreement were applied, w..ere would Management assign the former Template Makers, i.e., which classification and/or seniority group.

In response to Management's query as to whether the above Committee's request is to be interpreted as a proposal, the Committee stated it is not making such a proposal to Local Management nor does it intend to make such a proposal.

* * *

AFFIDAVIT OF HOWARD E. CASEY

STATE OF MICHIGAN
COUNTY OF WAYNE—ss.

HOWARD E. CASEY, being duly sworn, deposes and says that he is one of the plaintiffs in the above entitled cause.

Deponent further says he was one of the three of the plaintiffs who appeared at the Umpire's hearing on June 5 and 6, 1973, concerning the grievance of the plaintiffs, having been dealt with unfairly in the attempt to challenge the status of the plaintiffs — "journeymen," and denied them the protection provided for in paragraph 59 of the Union-Management Agreement. Deponent further says that at this hearing, John Bolin was on the Umpire's staff representing the defendant union, and supposedly the plaintiffs. That he was supposed to be trained, by reason of such staff position, in handling the claims of the plaintiffs; that the plaintiffs were unfamiliar with the manner in which umpires' hearings were conducted and, therefore, relied upon Bolin's skill in matters of this sort to properly present their case before the Umpire. That deponent was led to believe that said Bolin was properly presenting their cause before the Umpire. That when deponent was on the stand testifying, he began to tell the situation as it had existed in 1970 when disposition was made by defendant corporation regarding the status of the plaintiffs as journeymen, when one Gardner, counsel for General Motors, objected to deponent's testimony in this regard and told John Bolin that he had better talk to his man and "straighten him out."

Deponent further says that John Bolin had a recess declared, and called this deponent and others of the plaintiffs into the hall and stated that he, Bolin, had made a deal with Gardner not to mention anything about the 1970 negotiations, he, Bolin, claiming that it would weaken our position (the plaintiffs').

Deponent further says that he followed the advice of John Bolin and did not pursue this line of testimony any further. At the time when Bolin advised this deponent to refrain from discussing the 1970 negotiations, he did not realize or appreciate the significance of Bolin's remark that he and General Motors had agreed not to mention anything about the 1970 negotiations.

Subsequently and considering the matter further, deponent expresses his wonderment that Gardner should object to testimony it was claimed would hurt the plaintiffs and strengthen GM's position. He is of the opinion, and asserts as a fact, that this procedure was part of the collusive behavior of the defendants to prevent plaintiffs from having the protection of paragraphs 59, 178, and 220 of the Union-General Motors Agreement then in effect (the agreement between GM and the UAW as of November 11, 1970).

Deponent further says that at the time when he was interrupted, he was attempting to tell the Umpire, among other matters, that on the mantel in his home was a clock presented to him by defendant General Motors, complete with a bronze plaque, honoring him as a master craftsman (journeyman) with 25 years of service with General Motors, and that now he had been reduced to EITS (employee in training) without his

established seniority, in a metal bench and lay-out classification, the very same classification when he made journeyman status — 20 years previously.

And further deponent sayeth not.

/s/ Howard E. Casey

Subscribed and sworn to before
me this 20th day of December 1974

/s/ Lillian S. Stark
Notary Public
Wayne County, Michigan

My Comm. expires: May 24, 1975

AFFIDAVIT OF DON REHAHN

STATE OF MICHIGAN
COUNTY OF WAYNE—ss.

DON REHAHN, being duly sworn, deposes and says that he is one of the plaintiffs in the above entitled cause.

Deponent further says that on November 20, 1970, Joe Malotke and his Shop Committee and the Fisher Body Labor Relations Department negotiated away the seniority of the plaintiffs, which seniority ranged from 18 to 28 years. On that day, the contract was ratified by the "rank and file" who, after being out on the street for ten weeks during the General Motors strike were a bit unruly and wanted to get the voting over and go back to work. Bedlam then ensued, and the plaintiffs were thus not permitted to obtain a fair hearing and could not protest this action which deprived them of their seniority rights.

On the first working day after this ratification, George Toth, one of the plaintiffs, called for the union committeeman, Nick Corniuck, and requested him to file a grievance charging defendant, General Motors, with violation of paragraph 59, paragraph 178 and paragraph 220 of the National Agreement. That Nick refused to write the grievance, whereupon George Toth asked Nick Corniuck to request Joe Malotke to write it; that Joe Malotke refused.

Deponent further says that Joe Malotke and those with him on the Shop Committee resisted successfully plaintiffs' appeal to the International Executive Board concerning their rights under the union agreement. At a meeting regarding plaintiffs' seniority rights at Solidarity House of the IU UAW, Joe Malotke spoke against the plaintiffs, claiming that plaintiffs were not qualified journeymen. In that meeting, Pat Greathouse, a vice president of the International Union, UAW, who chaired this meeting, reminded Joe Malotke of the actions complained of against him and asked Joe Malotke if he were taking the place of Management. It was at this meeting that the position of the plaintiffs was sustained and Joe Malotke was directed to prosecute the claim of the plaintiffs concerning their seniority rights under paragraph 59. That despite this direction, Joe Malotke and defendant Local 160 have not done this, up to and including now.

Leldon Bartlett, one of the plaintiffs who has had much time and experience in the auto industry, including the tool and die apprenticeship, journeyman status in the Metal Bench and Lay Out classification and outside checking experience with defendant, General Motors Corporation, spoke to one of the committeemen of defendant Local 160, one Coy Swearengin and

requested that a grievance be written on his behalf charging violation of paragraph 178 of the union-management agreement, a violation involving his journeyman status. That said Coy Swearengin asked Joe Malotke if he should write the grievance. That Joe Malotke told him to tell Leldon Bartlett that he, Malotke, was not writing any grievance, and in so many words, said that Leldon Bartlett could take it to court. After the International Executive Board had advised Local 160 to proceed on behalf of the plaintiffs under the aforesaid paragraph 59, a meeting was held at Region 1 of the International Union UAW to determine further procedure. Joe Malotke and the Shop Committee of Local 160 were present and stated that the plaintiffs were incompetent as journeymen, Metal Bench and Lay Out Workers. This meeting turned out to be a farce so far as the plaintiffs are concerned. Frank James, who chaired this meeting, (Administrative Assistant to Irving Bluestone, International Union UAW director of General Motors Department) said that he was aware that plaintiffs had journeymen papers issued by defendant General Motors, and was told that this status had been recognized by the UAW-General Motors Agreement of 1948, but went on to say that they were not worth a nickel and that these were merely identification cards.

Deponent further says, as he is informed and believes it to be true, that at a management meeting of defendant General Motors, just prior to the ratification of the 1970 contract, one of the supervisors in the Template Department of defendant General Motors said that General Motors was letting themselves in for a law suit if they agreed with Joe Malotke and his Committee to strip the Template Makers of their seniority and make them EITS in various departments. Charles

Gaudet, personnel director of defendant General Motors and who was chairing the meeting, told the supervisor to shut his mouth. That if Joe Malotke and his Committee wanted "to screw" their own men, let them do it.

Further deponent sayeth not.

/s/ Don Rehan

Subscribed and sworn to before
me this 23rd day of December, 1974.

/s/ Lillian S. Stark, Notary Public
Wayne County, Michigan
My Comm. expires: May 25, 1974.

AFFIDAVIT OF MITCHELL J. FOKSA

I, Mitchell J. Foksa, being first duly sworn, deposes and says as follows:

That, after a meeting of the Template Makers on May 16, 1974, I was told by Plant Chairman Joe Malotke that if he had been on our side, the Template Makers would not have lost the Umpire Decision M-121.

/s/ Mitchell J. Foksa
11-25-74

/s/ Betty J. Ofiara
Notary Public, Macomb County, Mich.
My Commission Expires Oct. 26, 1977

AFFIDAVIT OF DONALD WISNIEWSKI

I, Donald Wisniewski, being first duly sworn, deposes and says as follows:

That after a meeting of the Template Makers on May 16, 1974, I was told by Plant Chairman Joe Malotke that if he had been on our side, the Template Makers would not have lost the Umpire Decision M-121.

/s/ Donald A. Wisniewski

/s/ Frederick M. Fortner
Notary Public, Macomb County, Mich.
Acting in Macomb County, Mich.
My Commission Expires Sept. 9, 1978

AFFIDAVIT OF EDWIN JANUSZKOWSKI

I, Edwin Januszkowski, being first duly sworn, deposes and says as follows:

That, after a meeting of the Template Makers on May 16, 1974, I was told by Plant Chairman Joe Malotke that if he had been on our side, the Template Makers would not have lost the Umpire Decision M-121.

/s/ Edwin Januszkowski

/s/ Edward J. Zelmanski
Notary Public, Wayne County, Michigan
My Commission Expires Nov. 23, 1975

(SEAL)